

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PICTURE PATENTS, LLC., :  
Plaintiff, : INDEX No. 07 Civ. 5567  
vs. : Judge Koeltl  
AEROPOSTALE, INC., : **JURY TRIAL DEMANDED**  
Defendant. :  
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Defendant Aeropostale, Inc. (“Defendant”) by and through its undersigned counsel hereby answers the Complaint of Plaintiff Picture Patents, LLC. (“Plaintiff”) as follows:

## ANSWER to COMPLAINT

1. Answering paragraph 1, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations.
2. Answering paragraph 2, Defendant admits that it is a Delaware corporation having a principal place of business at 112 West 34<sup>th</sup> Street, New York, New York. Except as expressly admitted, Defendant denies the allegations of paragraph 2.
3. Answering paragraph 3, Defendant admits that it is a Delaware corporation registered in the State of New York and has been and is doing business in the State of New York with a principal place of business at 112 West 34<sup>th</sup> Street, New York, New York. Except as expressly admitted, Defendant denies the allegations of paragraph 3.
4. Answering paragraph 4, admits that the Complaint purports to allege claims for relief under the statutory provisions listed in paragraph 4 and avers that otherwise the allegations assert legal conclusions as to which no response is required.

5. Answering paragraph 5, Defendant avers that the allegations are legal conclusions and references as to which no response is required.

6. Answering paragraph 6, Defendant avers that the allegations are legal conclusions and references as to which no response is required, admits that it is doing business in the State of New York and this District, and otherwise denies the allegations.

7. Answering paragraph 7, Defendant avers that the allegations are legal conclusions and references as to which no response is required.

8. Answering paragraph 8, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations, except admits that a copy of United States Patent No. 6,278,455 (the “455 Patent”) is attached to the Complaint as Exhibit A, which patent speaks for itself.

9. Answering paragraph 9, denies knowledge or information sufficient to form a belief as to the truth of the allegations.

10. Defendant denies the allegations contained in paragraph 10.

11. Defendant denies the allegations contained in paragraph 11.

12. Defendant admits that Plaintiff demands a jury.

13. Answering the Prayer for Relief, Defendant denies that Plaintiff is entitled to the relief requested or any relief.

#### **AFFIRMATIVE DEFENSES**

1. The Complaint fails to state facts sufficient to constitute a claim upon which relief may be granted.

2. Defendant has not infringed and does not presently infringe, either literally or under the Doctrine of Equivalents, any asserted claim of the ‘455 Patent.

3. The '455 Patent is invalid for failure to satisfy at least one or more of the conditions of patentability set forth in 35 U.S.C §§ 101, 102 and/or 103 and/or 112.

4. The '455 Patent is unenforceable for inequitable conduct committed before the United States Patent and Trademark Office during prosecution of the application.

5. Plaintiff is precluded by U.S.C. § 287 from seeking damages prior to providing actual notice of the '455 Patent to Defendant.

6. Plaintiff has failed to mitigate its damages.

Defendant demands judgment in its favor dismissing Plaintiff's claims with prejudice and awarding Defendant allowable attorneys fees and such other and further relief as may be just and equitable.

Dated: December 21, 2007

COOLEY GODWARD KRONISH LLP

By: 

Janet L. Cullum, Req. No. 4543815  
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New York, New York 10036  
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*Attorney for Defendant, Aeropostale, Inc.*

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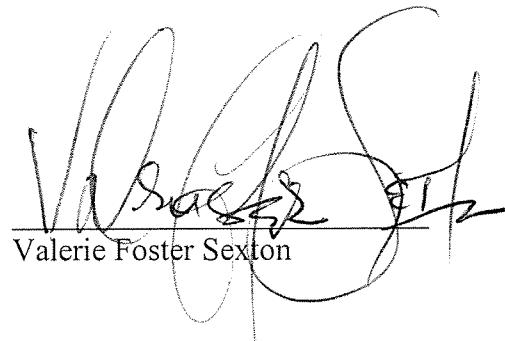
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STATE OF NEW YORK )  
 ) ss:  
COUNTY OF NEW YORK )

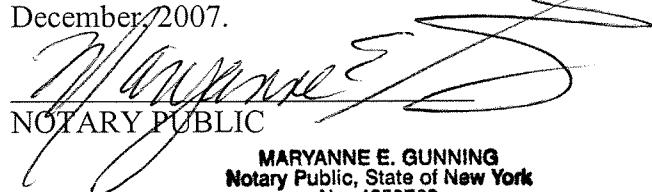
Valerie Foster Sexton, being duly sworn, deposes and says: that I am employed in the office of Cooley Godward Kronish LLP attorneys for Defendant Aeropostale, Inc. that on December 20, 2007, I served a true copy of the within Answer to Complaint by mailing a copy of the same in a postage-paid first-class envelope addressed as follows:

Thomas Jude Parker  
Alston & Bird, LLP  
90 Park Avenue  
New York, New York 10016



Valerie Foster Sexton

Sworn to before me this 21 day of  
December 2007.

  
NOTARY PUBLIC

MARYANNE E. GUNNING  
Notary Public, State of New York  
No. 4850769  
Qualified in Putnam County  
Certificate Filed in New York County  
Commission Expires February 16, 2010